

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Northern Illinois Gas Company	)	
d/b/a Nicor Gas Company	)	
	)	ICC Doc. No. 00-0620/00-0621
Review of Nicor Gas Co.	)	
Customer Select Plan	)	

**NOTICE OF FILING**

**PLEASE TAKE NOTICE** that on this date, April 12, 2001, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed The Reply Brief of The People of The State of Illinois via e-docket to the Chief Clerk of the Illinois Commerce Commission at 527 East Capitol Avenue, Springfield, Illinois 62794-9280.

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**CERTIFICATE OF SERVICE**

I, Erika D. Edwards, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on April 12, 2001, and by electronic mail to all active parties.

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Northern Illinois Gas Co	)	
d/b/a Nicor Gas Company	)	Dockets Nos. 00-0620 and 00-0621
	)	
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**THE REPLY BRIEF OF THE**  
**PEOPLE OF THE STATE OF ILLINOIS**  
**NON-PROPRIETARY VERSION**

**A. Introduction**

The Citizens Utility Board (CUB) and Cook County State's Attorney's Office (CCSAO) have taken the position that the Commission needs to carefully examine the Nicor Gas Customer Select Pilot Program and determine what changes should be made in order to ensure that Illinois moves towards an open market in a way that benefits consumers. (CUB & CCSAO In. Br. at 9) The People of the State of Illinois (The People) support this position and note that the changes proposed by CUB and CCSAO are consistent with the changes recommended by The People in their Initial Brief. The minor changes recommended by Nicor Gas do not remedy the problems identified in this docket and are insufficient to warrant an expansion of the program. Staff recommends an expansion of this program with significant modifications as well. However, the modifications recommended by Staff do not sufficiently warrant the expansion of this program.

**B. Nicor Gas Proposed Changes to Rider 15**

Nicor Gas proposes a number of changes to Rider 15, which applies to residential customers participating in the Customer Select Pilot Program. First, Nicor Gas proposes to expand Rider 15 to all the customers in Nicor Gas service territory. (Nicor Gas In. Br. at 3) The numerous problems which have been documented in this proceeding suggest that the Commission should make changes to this program before it is allowed to expand. Customer confusion, misleading advertising, and excessive fees charged to Suppliers are a few of the major flaws with the current Customer Select Pilot Program.

Second, Nicor Gas has agreed to change the section labeled "Charges" in Rider 15. (Nicor Gas Br. at 20.) This portion of the tariff as originally proposed would have held customers liable for charges or fees on which the supplier defaulted. The elimination of this section removes the burden of liability from the customer and properly places it upon the supplier. The People support this change in Rider 15.

The People also support several of Nicor Gas' proposed changes to Rider 15.

These changes are as follows:

1. Nicor Gas proposes a change to Rider 15 which will require the supplier to notify the customer of both enrollment and termination of service.
2. If the customer wishes to terminate service the customer must notify the supplier who will in turn notify Nicor Gas.

3. Nicor Gas agrees to share with suppliers the proceeds received from third parties such as the Low Income Home Energy Assistance Program (LIHEAP) for the customers' benefit. This money would first be applied to any Company arrears, and then to any arrears of the supplier. Then to Nicor Gas' current charges followed by paying suppliers current charges.

(Nicor Gas Br. at 4) The People agree that suppliers should be required to notify the customer of both enrollment and termination of service. Nicor Gas should also have the obligation to notify the customer of their enrollment once they have chosen a supplier.

The People would suggest that third party funds be allocated first to Nicor Gas' arrears charges and current charges and then dispersed to Suppliers. These changes are improvements to the current Customer Select Pilot Program and should be implemented.

However, these changes are only a few of the changes necessary to ensure that this program has a positive result for Nicor Gas, Suppliers, and residential customers. The changes suggested by The People, CUB, CCSAO, and Staff must also be implemented.

### **C. Consumer Protection and Education**

Staff has proposed that the Commission order Nicor Gas to conduct workshops on customer education for the Customer Select Pilot Program. Staff's proposal may remedy some of the deficiencies that currently exist with Nicor Gas' customer education program for Customer Select. However, if the Commission chooses to require workshops, the pilot should not be allowed to expand until these workshops conclude. The evidence in this case has shown that more customer education is needed and to allow this program to expand prior to implementing customer educational tools will only put even more customers at risk.

One of the consumer protection issues which Staff addresses pertaining to the customer enrollment process. Staff recommends requiring a document that is known as a **Letter of Agency**. In its Initial Brief, Staff recommends the use of a **Letter of Agency** document to discourage suppliers from switching customers without their authorization. (Staff In. Br. at 62) This letter would be required when suppliers obtain customers through written contracts. The additional information required in the **Letter of Agency** for electric utilities that Staff bases its recommendation on is :

1. The subscriber's billing name and address;
2. The decision to change the electric service provider from the current provider to the prospective provider.
3. The terms, conditions, and nature of the service to be provided to the subscriber, must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber.
4. Clear explanation to the subscriber that any electric service provider selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's electric service provider.

815 ILCS 505/2EE(5) The People support the use of this letter when Suppliers are signing customers via written contracts.

Staff also proposes that Nicor Gas be required to send letters to customers notifying them of their participation in the Customer Select Program. (Staff Br. at 66) The People also support this proposal. Requiring Nicor Gas to send letters of confirmation to customers may aid in the prevention of "slamming" i.e. customers being switched without their knowledge or consent. This letter, as with the **Letter of Agency**, will not only act to notify customers of their choice of supplier and provide protection against slamming but may also educate customers on the process of choosing a supplier.

Nicor Gas opposes the use of a LOA. (Nicor Gas Int. Br. at 36) Nicor Gas believes that the use of the LOA would make the switching process more cumbersome for Suppliers and would increase costs for both the Company and Suppliers over the current, paperless electronic sign-up process.” (Id.) Nicor Gas never addresses the issue of customers being switched without their consent, which the letter is intended to prevent. The positive impact this letter may have in the prevention of slamming outweighs the impact of additional cost or effort required by both Nicor Gas and Suppliers.

Staff argues that customers should not have the right to rescind their agreement to subscribe to a Supplier within a reasonable amount of time. (Staff Br. at 66) GCI witness Alexander recommends 3 business days. (GCI Ex. 1.0 at 49) The complexity of the offers contained in Customer Select Contracts makes understanding the offers difficult. (People Int. Br. at 6-9.) Customers should be allowed a few days to review the contract materials, with which they may be unfamiliar to make certain they have made the correct and intended choice. This is an established consumer protection in door-to-door sales and should apply to Nicor Gas’ program as well. (GCI Ex. 1.0 at 49)

Staff opposes uniform price disclosures to residential customers. (Staff Int. Br. at 67) Staff contends that the fundamental differences between fixed prices, variable prices and the utility’s PGA charge makes an apples to apples comparison of prices impossible. (Id.) GCI witness Alexander did not propose comparing fixed rates and variables against each other. Alexander proposed the following:

Natural gas marketers should be required to disclose the price of gas supply service in a uniform format using the same method that appears on the customer’s natural gas bill from the distribution utility, in this case, cents per therm. The

price disclosure must include all fixed and variable monthly charges included in the Supplier's contract with the customer. This disclosure should be provided in a representative number of usage profiles for both residential and small commercial customers and appear on all marketing or contract materials that state a specific price for gas supply service. This price disclosure requirement should apply to both fixed and variable price offers. Prices should be clearly labeled ~~A~~fixed~~@~~ or ~~A~~variable.~~@~~

When a marketer seeks to offer a price that varies with an external index, the marketer should be required to use an index that is external to the marketer and independent of any potential manipulation by the marketer. The identification of the external index should be accompanied by a price disclosure for a particular usage profile for the recent past and the following statement: ~~A~~This is an example of how prices would have changed under this index over the last 12 months. Your price will vary with the change in the index and past savings are no guarantee of future prices.~~@~~ These price disclosures would be similar to those required for variable rate mortgages under the Truth in Lending Act or for electricity and natural gas in Pennsylvania, New Jersey, Texas, Montana, and other states that have adopted price disclosure requirements for retail energy competition.

(GCI Ex. 1.0 at 18)

This testimony of Ms. Alexander does not seek to compare variable and fixed rates to each other but seeks to make comparisons of fixed rates to fixed rates and variable rates to variable rates possible. The People agree with Staff that ~~A~~there is no way of informing customers exactly what they will pay for natural gas in the future if they choose a variable price offer or take service from the utility.~~@~~ (Staff Br. at 67) What The People, CUB, & CCSAO are proposing is that if suppliers offer customers variable rates that are based upon an index (1) that this index be independent of the Company and (2) that the Company provide historical data of the performance of this index for the past 12 months. This disclosure is similar to disclosures generally available for variable rate mortgages. Although this information is no guarantee of future prices it does give the customer a

starting point from which to make an evaluation of the supplier's offer. Providing customers with no data whatsoever forces customers to make a blind choice without any knowledge of what price risks they may be taking.

Nicor Gas suggests that issues that are related to consumer protection and affiliate transactions are "generic matters" and should not be addressed in this docket. (Nicor Gas Int. Br. at 37) Nicor Gas is correct in stating "that whether affiliate regulations will be adopted for the natural gas industry is currently the subject of a rule-making proceeding pending before the Commission in docket 00-0586." The issues raised by witnesses Alexander, Mierzwa, and Cohen may indeed be relevant to the issues being litigated in docket 00-0586. However, these issues pertain specifically to the problems found with the Customer Select Pilot Program. This docket is meant to be a comprehensive review of the Customer Select Pilot Program, and the Program as currently devised has serious flaws in the areas of consumer protection and consumer education. This docket is the only forum in which those specific flaws may be remedied.

#### **D. Corporate Name and Logo**

Nicor Gas objects to any restraint on the use of its corporate name and logo. Nicor Gas is correct in asserting that in the electric industry utilities and affiliates are allowed to share corporate names and logos. (Nicor Gas Int. Br. at 39) The evidence shows that the sharing of a corporate name and logo in this specific program has resulted in 1) customer confusion as to which company is providing service, and 2) only one supplier, Nicor Energy attaining 93% of the residential market share. The testimony provided by witnesses Cohen and Hurley indicate that many customers do not understand



the nature of the relationship between Nicor Gas and its unregulated affiliate Nicor Energy. The remedy to this problem is to prohibit Nicor Gas from sharing its corporate name and logo with any Supplier participating in the Customer Select Pilot Program.

**E. Single Billing**

Nicor Gas objects to allowing Suppliers to provide customers with single bills. Nicor Gas suggests that it is a question of safety because customers must be constantly reminded of where they need to call in case of a gas leak. The People disagree with this position. The phone number that customers must call in case of an emergency can still remain on the bill even if that bill is produced by a Supplier.

Nicor also asserts that allowing Suppliers to provide single billing, will interfere with its ability to fulfill its duties pursuant to Parts 500 and 280 of the Commission's Rules. (Nicor Gas Int. at 23 ) Once the Commission resolves the consumer issues raised by CUB, CCSAO, and the People compliance with Parts 500 and 280 should not be effected by allowing Suppliers to provide single bills. As stated by CUB "[a]doption of the single billing recommendation would require the Commission to address a number of important consumer protection, disclosure, billing and collection issues raised by witnesses Mierzwa and Alexander," (CUB & CCSAO Int. Br. at 35-36), once these issues are resolved it is important that Suppliers be allowed to bill customers on one single bill.

Allowing Suppliers to become agents as suggested by Staff also raises some consumer protection issues that must be resolved prior to administration. Currently the Commission has no direct jurisdiction over Suppliers, so allowing Suppliers to act as agents on behalf of customers may expose customers to potential abuse by Suppliers in

which case the only remedy customers would have would be to go to Court. It is uncertain if the statutory protections for consumers provided in sections 220 ILCS 5/8-201 though 220 ILCS 5/8- 401 would apply to Suppliers. For example customers would have no recourse with the Commission for untimely billing, or errors in bills, or excess charges for bills created by Suppliers.

**F. Credit History**

As the tariff is currently drafted Nicor Gas will provide the credit history of a customer to a Supplier with that customer's authorization. The People support the position of CUB, CCSAO, and Staff that this information should not be provided to suppliers. (CUB & CCSAO In. Br. at 45; Staff In. Br. at 65-66) Suppliers should have the no more access to credit information than that which is generally available in a competitive market i.e. credit reporting agencies.

**G. Storage**

The People do not agree with Nicor Gas=assertion that the 30 percent flexibility permitted to Suppliers to accommodate changes in their delivery quantities is sufficient storage. ( Nicor Gas Int. Br. at 37) The People support the position offered by CUB & CCSAO that ANicor maintains significantly more storage flexibility than is made available to Suppliers.@( CUB & CCSAO Int. Br. at 37) By limiting the amount of storage Suppliers receive, it is difficult for those Suppliers to manage their costs. (Id.) The recommendations made by Mr. Mierzwa regarding the storage permissible to Suppliers should be adopted.

**G. Fees**

Nicor Gas proposes that the fees charged to Suppliers pursuant to Rider 16 should continue in order to offset the “ongoing” costs of the Customer Select Pilot Program. (Nicor Gas In. Br. at 6) Staff recommends that these fees be lowered. (Staff Int. Br. at 18) The People support the position of CUB & CCSAO which asserts that Supplier fees be eliminated. CUB and CCSAO correctly assert that Aelimination of these fees and charges will level the playing field between third-party Suppliers and Nicor and promote competition. (CUB & CCSAO In. Br. at 37) The fees proposed by Nicor Gas do not reflect any of the savings Nicor Gas receives by administering this program. Nicor Gas has presented no evidence that the “ongoing” cost of the Customer Select Pilot Program exceeds the savings that Nicor Gas receives associated with this program. The People recommend that the fees charged to Suppliers in pursuant to Rider 16 be eliminated.

#### **H. Benefit to Customers**

Nicor Gas claims that the Customer Select Pilot Program should be expanded because it benefits customers. Granting an expansion to the Customer Select Pilot Program without the changes recommended by The People, CUB and CCSAO will result in barriers to competition and harm to consumers. As the Customer Select Program is currently created, customers do not have a “meaningful” choice of Supplier for their natural gas service. Nicor Gas witness Harms has stated that of the 26 Suppliers participating in the Customer Select Pilot Program, only 3 or 4 Suppliers are actively participating in the residential market. (TR. 186) Only 3 Suppliers intend to market to residential customers in the future. (GCI Ex. 2.0 at 9) Nicor Energy has 93% of residential customers participating in the Customer Select Pilot Program. The way the Customer

Select Program is currently set up residential customers essentially have a choice between Nicor Gas and Nicor Energy for their residential gas service. This is not “meaningful” choice.

Nicor Gas seeks to establish that the number of complaints received by the AG and CUB office relative to the number of customers participating in the program is such a small percentage that therefore it has designed a good program. (Nicor Gas In. Br. at 14). This conclusion is incorrect. The number of complaints received does not indicate the value of this program. The complaints received illustrate the problem with this program that needs to be remedied. Nicor Gas witness Harms describes a complaint as “a quality control check” that needs to be investigated. (TR. At 133) This proceeding is that investigation, and the evidence has shown that there are problems with the Customer Select Pilot Program. The Commission need not wait until thousands of customers have been so severely harmed that they file complaints to remedy what evidence has shown to be a problem.

Nicor Gas further asserts that customers participating in the Customer Select Pilot Program value the services that they have received and have saved money. (Nicor Gas In. Br. at 15) GCI witness Mierzwa however testified that :

A survey conducted by Nicor indicates that some customers have saved money. However, Nicor has been unable to identify which customers saved money. If savings have been achieved, those savings have largely occurred by chance.

(GCI Ex. 2.0 p. 11) Nicor Gas concludes that this statement made by witness Mierzwa is

“objectively wrong”. (Nicor Gas In. Br. at 15.) However, Nicor Gas’ own arguments support Mr. Mierzwa’s conclusion. In support of this position Nicor cites the language in following document produced by its affiliate Nicor Energy:

**Proprietary Information Begins Here\*\*\*\*XXXXXXXXXXXXXXXXXXXX**  
**XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**  
**XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**  
**XXXXXXXXXXXXXXXXXXXX Proprietary Information Ends Here\*\*\*<sup>1</sup>**

(Id.)

Nicor Gas uses this statement made by Nicor Energy in response to a data request to conclude that customers that chose the 26.5 cent per therm lock-in rate actually achieved savings. No evidence has been provided by either Nicor Gas or Nicor Energy that compares the rates of these two companies and no work-papers were provided. Nicor Energy did not appear as a party and declined to provide any factual basis for this broad claim. The 26.5 cent per therm offer was never achieved and Nicor Energy’s variable rate is a market based rate (GCI Ex.1.1).

There is no longer a bill comparison on the customer’s bill so the customer has no way of knowing if savings have occurred. *If* customers have achieved any savings on this rate in comparison to Nicor Gas it is because the market index rate used by Nicor Energy was lower than the rate offered by Nicor Gas. There is no evidence that supports that this actually occurred beyond this bold assertion made by Nicor Energy. The evidence does indeed support the conclusions drawn by witness Mierzwa that savings under the Customer Select Pilot Program may have only occurred by chance.

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<sup>1</sup> The Hearing Examiners in this case have ruled this information Proprietary. This quote is included in full in the Non-Proprietary version of the Initial Brief of Nicor Gas.

The evidence in this case has shown that at least some customers who chose Nicor Energy reasonably believed they were going to receive a fixed rate of 26.5 cents per therm which they never did. Customers who chose the fixed rate offered by Santanna Gas were switched to a market-based rate once prices began to rise (GCI Ex.1.0 at 34). No evidence has been offered that either of these market based rates actually represented savings over the rates offered by Nicor Gas. Almost, any savings if achieved, occurred by chance and not due to the merits of the offer.

#### **I. Benefits to Suppliers**

Nicor Gas argues for expansion to all customers because it would benefit suppliers. (Nicor Gas Br. at 18) The evidence in this case does not support this conclusion. Expanding the scope of the Customer Select Pilot Program does not correct the excessive fees that Suppliers must pay to participate in this program. The profit margin for a residential customer remains small, and the fees charged by Nicor diminish that small profit.(People Br. at 25)

Allowing Nicor Gas and Nicor Energy to share the same corporate name and logo provides Nicor Energy with an extreme advantage over its competitors. The expansion of this program without any change is not enough to level-the-playing field. The expansion of this program will benefit one Supplier, Nicor Energy.

Nicor Gas asserts that the fact that no individual Supplier has intervened in this case suggests that Suppliers are satisfied with this program. (Nicor Gas Br. at 19) This assumption is not supported by the evidence of this case. The evidence in this case has shown that the number of Suppliers choosing to provide service dropped over the course

of this program. (GCI Ex. 2.0 at 9.) The evidence has shown that currently only 3 or 4 Suppliers intend to continue to provide service to residential customers in the future.(Id.) This evidence actually refutes the conclusion drawn by Nicor Gas regarding Supplier satisfaction with this program.

**J. Conclusion**

The Nicor Customer Select Pilot Program must be adjusted and changed prior to its expansion. The People support the recommendations made by CUB and CCSAO and suggest that the Customer Select Pilot Program be expanded only after customer protections and educational measures have been put in place.

Respectfully submitted,  
People of the State of Illinois,  
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Dated: April 12, 2001

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